

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**CRIMINAL DIVISION  
2CRI/bal/362/2014**

**B E T W E E N**

**RASHAD COOPER**

**Applicant**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**Before: The Hon. Madam Justice W. Renae McKay**

**Appearances: Mr. Troy Kellman for the Applicant  
Ms. Cassie Bethell and Ms. Davina Pinder for the Respondent**

**Hearing Dates: 8<sup>th</sup> June 2022, 23<sup>rd</sup> June 2022**

**Ruling Date: 8<sup>th</sup> July 2022**

**RULING**

1. Mr. Rashad Cooper (hereinafter referred to as “the Applicant”) is again applying for bail by way of Summons and an Affidavit in support filed on 20<sup>th</sup> May, 2022 and a supplemental Affidavit filed on 23<sup>rd</sup> June, 2022. The application for bail that he made is for one (1) count of Assault, for which he stated that he was charged on 6<sup>th</sup> May, 2022, at which time he plead not guilty and was remanded to The Bahamas Department of Correctional Services (hereinafter referred to as “BDOCS”) until his trial date of 30<sup>th</sup> June, 2022 or until such time as he receives bail from the Supreme Court. He is a 34 year old air condition technician and verily believed that he was a fit and proper candidate for bail.
2. The Applicant averred that the strength of the Prosecution’s case against him was weak and tenuous. He added that he had been previously convicted for the offence of possession of dangerous drugs and that he currently had 2 pending matters (for which he could not provide any information). If he is granted bail, he was not a flight risk as he would appear for his trial on all scheduled occasions, would abstain from interfering with any prosecution witnesses and that he would not commit any offence while on bail.
3. Counsel on behalf of the Director of Public Prosecutions (hereinafter referred to as “the Respondent”), objected to the Bail Application stating that he is not a fit and proper

candidate, as bail had previously been granted but was revoked for his failure to attend court. They explained that the offence of Assault had stemmed from the Applicant allegedly physically attacking his girlfriend Lashanda Gray (“**Ms. Gray**”) on Friday, 18<sup>th</sup> December 2020. Ms. Gray claimed that while at an Air BnB party in the area of Rocky Pine Road, the Applicant punched her in her nose and about her face.

4. This resulted in Ms. Gray running to and getting inside of her vehicle which the Applicant pulled her out of, threw her on the floor and continued to attack her. Ms. Gray stated that she was able to get away, run back into her vehicle and lock the vehicle’s doors. The Applicant then punched her front windshield causing damage to her silver 2020 Nissan Note. The Applicant’s violent attack had to be stopped by a group of people (**the “18<sup>th</sup> December 2020 Assault”**).
5. The Respondent further averred that the applicant’s two (2) pending matters, which he noted at paragraph seven (7) of his Affidavit of 20<sup>th</sup> May, 2022, stemmed from another act of violence inflicted on the same virtual complainant as the 18<sup>th</sup> December, 2020 assault.
6. The Respondent explained that on Sunday, 24<sup>th</sup> April 2021, an officer on mobile patrol had received a complaint about a man beating a woman at an apartment complex situate Caribbean Close off of Gladstone Road. Upon the officer’s arrival, screams were heard from inside of one of the apartment units. The officer knocked on the door, announced himself as a police officer and a male who was identified as the Applicant, eventually opened the door.
7. The officer proceeded to the bedroom and observed a woman sitting on the floor crying. She identified herself as Ms. Gray and informed the officer that the Applicant had choked her until she almost passed out, had beaten her about her body and bit her on her leg. This led to the officer arresting the Applicant who began resisting being carried to the police vehicle. He refused to walk and fell to the ground. He had to be lifted to the police vehicle while he continued to violently resist. After refusing to go into the vehicle, he was lifted and placed in the vehicle and the Applicant began to kick the door of the vehicle.
8. The Applicant’s acts led to him being charged with one (1) count of Disorderly Behaviour and one (1) count of Resisting Arrest.
9. The Respondent explained that contrary to the Applicant’s averment at paragraphs four (4) and five (5) of his affidavit of 20<sup>th</sup> May, 2022, he was not charged on the 6<sup>th</sup> of May, 2022 with Assault and thereafter remanded until his trial date or until he is granted bail by the Supreme Court, but that the true course of events revealed that 6<sup>th</sup> May, 2022 was the day that the Magistrate in Court #6 revoked his bail that was previously granted for all three (3) offences (Assault, Disorderly Behaviour and Resisting Arrest).

10. The Respondent averred that the Applicant appeared in the Magistrate's Court on 26<sup>th</sup> April 2021 for his arraignment for all of the charges hereinbefore mentioned. He pled not guilty and was granted bail. One of the conditions of his bail was to sign in at the Nassau Street Police Station every Monday and Wednesday before 7:00 p.m. He was also warned not to interfere with any witnesses and the matter was adjourned to 8<sup>th</sup> July, 2021. However, on the adjourned date the Applicant failed to appear before Court #6 and a warrant of arrest was issued.
11. Almost a year later, on Friday, 6<sup>th</sup> May 2022, the Applicant appeared before Magistrate Court #6 on a warrant of arrest and was fined one hundred dollars or five days imprisonment for failure to return to court. His bail was also revoked and the matter was adjourned to 30<sup>th</sup> June 2022 for trial.
12. The Respondent averred that the Applicant was not of previous good character and that the Applicant was again not truthful, full and frank in his statement as to his previous convictions. The Respondent produced an Antecedent Form confirming that he had previous convictions for vagrancy in 2012, stealing in 2017 and two (2) convictions for possession of dangerous drugs, in 2020 and 2021. This, the Respondent said, indicated that the Applicant had a propensity to reoffend.
13. The Respondent further stated that having regard to the Applicant's vigorous and violent attempts to resist arrest, as well as his failure to appear to court on the adjourned date, he is a flight risk and would not appear to face his imminent trial if he is released on bail.
14. In response to the Respondent's claims, the Applicant accepted that on the 24<sup>th</sup> April 2021, he was arrested for allegedly assaulting Ms. Gray, resisting arrest and disorderly behavior at their residence. That while in custody, he was interviewed and questioned with respect to the 18<sup>th</sup> December 2020 Assault. Following his arrest, he was arraigned before the Magistrate on the 26<sup>th</sup> April 2021 and charged with Disorderly Behavior and Resisting Arrest. He pled not guilty and was granted bail. His matters were adjourned for trial to the 8<sup>th</sup> July 2021. He said that at no time was he questioned or arraigned with respect to the alleged assault which occurred on the 24<sup>th</sup> April 2021.
15. The Applicant explained that on the 2<sup>nd</sup> May 2021, he appeared before Magistrate Darence Rolle-Davis for Possession of Dangerous Drugs and was sentenced to a term of 6 months imprisonment. He was released on the 2<sup>nd</sup> November 2021. It was as a result of his imprisonment, that he did not appear on the 8<sup>th</sup> July 2021 for his trial. This led to his arrest on the 5<sup>th</sup> May 2022 which was the result of 2 outstanding warrants stemming from his failure to appear on the 8<sup>th</sup> July 2021. The Applicant stated that despite his attempts to explain his failure to appear to the Magistrate, he was ordered to pay a one hundred dollar penalty for each charge and his bail was revoked.

16. The Respondent stated that nevertheless, once he was released from custody, he was under a duty to present himself before Court and explain the reason for his absence on the adjourned date. They say that he was well aware that he had outstanding matters before court and that the date given to him to appear had passed. The Respondent further stated that but for his arrest on 5<sup>th</sup> May, 2022, his actions indicated that he would not have presented himself to face his trial and that this is nevertheless evidence that he is unlikely to appear to face his trial on his own volition.
17. The Respondent also submitted that notwithstanding this delay on the part of the Applicant, he has an imminent trial date of 30<sup>th</sup> June, 2022 and therefore in all the circumstances, there has been no unreasonable delay.

### **Decision and Ruling**

18. I accept that on the 26<sup>th</sup> April 2021, the Applicant was charged with Assault, Disorderly Behaviour and Resisting Arrest, that bail was granted at that time on certain conditions and that he was told to return to court on 8<sup>th</sup> July, 2021. I further accept that his failure to attend on the adjourned date was as a result of him being in custody at BDOCS serving a six (6) months sentence, that the Applicant was brought before Court #6 on a warrant of arrest, at which time his bail was revoked and he was remanded to prison.
19. By statute and by case law, the Court must consider, when determining a bail application, whether an accused would abscond, interfere with witnesses or commit further offences while on bail. In **Attorney General v. Bradley Ferguson, et al SCCrApp. No.'s 57, 106, 108, 116 of 2008**, Osadebay, JA observed as follows:

*“As stated by Coleridge J in Barronet’s case cited earlier the defendant is not detained in custody because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial.”*

Therefore, it may be said that the main consideration for a court in a bail application is whether the applicant would appear for his trial.

20. The Court notes the dishonest averments as to the Applicant’s present circumstances and reasons for being in custody. The Applicant misled the Court by indicating that he was presently remanded on the basis of him being recently charged when his present remand is due to a revocation of bail previously granted over a year ago.
21. In the general provisions relating to bail, more specifically, s.9(2) of the **Bail Act Ch 103**, it states, inter alia, that, *“A person to whom bail is granted in criminal proceedings is under a duty to surrender to custody...”*

While I accept that the Applicant's initial non-attendance on 8<sup>th</sup> July, 2021 was through no fault of his own, he has offered no explanation for his non-attendance for the six (6) month period following his release. I've considered the circumstances surrounding his resisting arrest charge, but moreover not only his failure to surrender to court in the period after his release from custody as soon as was reasonably practicable, but his inability nor even an attempt to show that he had reasonable cause for the said his failure to surrender after his release. I therefore find that there are substantial grounds for believing that the Applicant would not appear to face his trial if released on bail.

22. On the issue of the cogency of the evidence, I accept that the hearing of a bail application is not the appropriate place for a forensic examination of the evidence that the prosecution intends to rely on. **Article 19(1)(b)** of the **Constitution** guarantees that no person shall be deprived of personal liberty, save upon reasonable suspicion of having committed a criminal offence. Although personal liberty is guaranteed by the Constitution, the law authorizes the taking away of that personal liberty upon reasonable suspicion of a person having committed a crime.
23. In the instant case, the charges against the Applicant stem from an incident involving Ms. Lashanda Gray, his girlfriend both on the 18<sup>th</sup> December, 2020 and 24<sup>th</sup> April, 2021. With respect to the charge of Assault, the Applicant is accused of physically attacking Ms. Gray. With respect to the events of 24<sup>th</sup> April, 2021, I note that the Applicant was not charged with a subsequent Assault against Ms. Gray, however, I also note that the reason for the officer's attendance at the Applicant's residence was said to be due to the receiving of information from police control room and that on the officers arrival the screams for help from Ms. Gray were heard, and the event surrounding the Applicant's subsequent arrest lead to the charges of Disorderly Behaviour and Resisting Arrest.
24. I acknowledge that a bail application is not a finding of fact as that is the job of a jury or Magistrate. However, I am vested with the discretion to consider whether the evidence before me is sufficient to raise a reasonable suspicion of the Applicant having committed the offence. I therefore make no findings on the probative value of the witness statements exhibited before me save to say that the evidence raises a reasonable suspicion of guilt.
25. I am guided by the **Bail Act, Ch 103** and so far as is applicable in the instant case the 2014 amendment provides:

*(h) "in the case of violence allegedly committed upon another by the defendant, the court's paramount consideration is the need to protect the alleged victim."*
26. The evidence before me of the Applicant's attack on Ms. Grey satisfies me that if the Applicant if released on bail Ms. Grey would be in danger of again being physically attacked or otherwise interfered with.

27. The character and antecedents are also relevant considerations for this Court. The Applicant's Antecedent Form indicates previous convictions for Vagrancy, Stealing and Possession of Dangerous Drugs (x2). As was noted above, the Applicant has two pending matters, which interestingly enough, he made no application for bail for, knowing that the bail granted in respect of those matters were revoked at the same time the bail for the Assault charge was revoked.
28. In relation to his previous convictions, while they are not offences of a similar nature, they nevertheless evidence that he is not of previous good character. However, I note the conviction for Stealing, being a crime of dishonesty and the deceit perpetrated against this Court in his averments as to the circumstances surrounding his present remand for the subject matter of this application.
29. The determination of a bail application requires the performance of a balancing act which I have carried out. In that regard, I accept that the nature of the offence is a serious one, involving violence against a person with whom he was in a close relationship with. I also accept that the need to protect the alleged victim is a paramount consideration. I accept that the Applicant is not of good character and that his previous convictions indicate a propensity to reoffend. Moreover, I accept that the Applicant failed to surrender himself to Court after his release from custody, offered this Court no explanation for this and that the agents of the stated had to be engaged to return him to Court. I find that these are substantial grounds for believing that he will abscond and not appear to face his trial.
30. I have also considered the imposition of the usual conditions. The bail previously granted for these offences included suretors and signing in, which did not ensure his attendance after his release from custody. I am of the view that the imposition of an EMD cannot minimize the risk of harm or protect against any further harm to the virtual complainant I am therefore of the view that the imposition of conditions would not ameliorate the court's concerns.
31. Having considered the totality of this application, the circumstances of this case and the circumstances of the Applicant, I find that the Crown has satisfied the court that the applicant ought to be remanded into custody and I therefore refuse bail.

**Dated the 8<sup>th</sup> July 2022**

**Hon. Madam Justice W. Renae Mckay**